



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

above the average in order to be eligible. A convenient office in the Prospect Union in Central Square, Cambridge, is kept open from four to six and from seven to nine every day. The men take turns keeping office hours, and each man carries through to completion the cases that come in during his hour. Doubtful cases are presented to an executive board for review in order to avoid as far as possible the undesirable result of giving aid to the unworthy.

The success and enthusiasm with which the work has been carried on is due largely to the desire on the part of the men to apply concretely the principles they have learned in the classroom. Legal theories become vitalized and have a new meaning. Thus in addition to the aid given to those in need of it, the men derive from their handling of real cases a practical benefit not afforded by the curriculum.

The Bureau's chairman for the current academic year is Mr. Charles B. Rugg of Worcester, Mass.; the secretary is Mr. Clarence B. Randall of Cambridge. The members from the third year class are Messrs. T. W. Arnold, L. Brewer, J. A. Daly, C. P. Franchot, R. P. Goldman, F. C. Hodgson, R. H. Holt, F. A. Johnson, R. S. Keebler, P. McCollester, W. F. Merrill, E. R. Philbin, H. E. Riddell, K. T. Siddall, and M. C. Teall. The members from the second year are Messrs. J. B. Dempsey, E. G. Fifield, J. Garfield, E. C. Kanzler, E. W. Middleton, F. A. Nagel, F. M. Qua, B. Reiley, A. C. Tener, and R. S. Wilkins. The chairman and secretary under whose auspices the organization was inaugurated were Mr. Campbell Bosson of Boston, Mass., and Mr. Malcolm M. McDermott of Chattanooga, Tenn. The expenses of operation are met by the Law School Society of Phillips Brooks House.

---

RIGHT OF MUNICIPALITY TO AMUSE ITS CITIZENS AS A FUNCTION OF GOVERNMENT.—No question is more difficult than the determination of the exact field of government in the modern state. Originally only purposes clearly *governmental* in character were included within it. Gradually, however, under changed economic and social conditions not only have these strictly governmental activities of the state increased in number, but also a variety of public businesses such as waterworks, gas plants, and street railways have come under government control or ownership. A recent case before the Supreme Court of Ohio suggests that there may be still another field for governmental activity by raising the question whether a city may not establish at public expense a municipal moving picture show. *State ex rel. Toledo v. Lynch*, 102 N. E. 670 (Ohio). The court denied the right of the city to establish such a theatre. Whether this holding was absolutely essential for the disposition of the case seems doubtful, for no express authorization to build the theatre had been given by the state legislature, and the court placed great reliance upon the point that a constitutional provision giving to the city general powers of local self-government under which such an authorization might be implied was not yet in effect.<sup>1</sup>

---

<sup>1</sup> The opinions of the respective justices were as follows:  
Shauck, C. J., held (1) That the powers of local self-government had not yet passed to the municipal council under the constitutional provision; but nevertheless added

Certainly a moving picture show could not be conducted by the city on the same basis that it runs a waterworks or a gas plant. In the case of public utilities any deficit which occurs in running the business may be made up by taxation. But a moving picture theatre has no virtual monopoly of a popular necessity. It cannot be considered a public service company which must serve at a reasonable price all who apply. Hence in the possible use of tax funds for its support the state would not be making a proper return to every taxpayer for his tax paid, and would be violating the fundamental principle that taxes can be used only for public purposes.<sup>2</sup> Moreover, this same principle precludes the city with equal certainty from conducting a theatre as a private business in the hope that it may prove a source of revenue and profit to the municipality. Hence if the city is to undertake the establishment of a moving picture show, it must be upon the ground that it is a governmental function to furnish such amusement for its citizens. On this theory no charge could be made and the doors of the theatre would have to be open to all. The idea that such an undertaking would be a governmental function at first seems startling. Cases holding the maintenance of public parks to be a distinctly governmental function tend to support it.<sup>3</sup> But it may be urged that these decisions are based upon the city's duty to protect the health of its citizens. Band concerts also can be given at public expense;<sup>4</sup> but these, it may be argued, come within the educational provisions which a city may make for its people. It seems, however, that there may well be education for many classes of people in a properly conducted picture show, and such a theatre, by keeping the public away from the cheap dance hall or the saloon, would surely tend to improve the health and moral tone of the community. No case exactly on all fours with the present can be found.<sup>5</sup> True, the authorities are opposed to allowing public expenditures for town celebrations and banquets.<sup>6</sup> But since here the benefit to the citizens is purely in the nature of temporary amusement, the cases seem readily distinguishable.

On the whole, it is impossible to draw any hard and fast line determining what functions are governmental. Within recent years the state seems to have assumed toward its citizens an increasing paternal attitude,

---

(2) that the establishment of a municipal moving picture theatre was not within these powers.

<sup>1</sup> Wilkin, J., delivered a concurring opinion.

Newman, J., also concurred.

Johnson, J., concurred in (1) but gave no opinion on (2).

Donahue, J., dissented in (1) and on (2), although inclined to think that a theatre might come within powers of local self-government was not satisfied that the present one did so.

Wanamaker, J., dissented on both (1) and (2).

<sup>2</sup> *i* COOLEY, TAXATION, 3 ed., 192; COOLEY, CONSTITUTIONAL LIMITATIONS, 7 ed., 696 n.; Opinion of the Justices, 155 Mass. 598, 30 N. E. 1142; *Hayward v. Town of Red Cliff*, 20 Colo. 33, 36 Pac. 795.

<sup>3</sup> *4* DILLON, MUNICIPAL CORPORATIONS, 5 ed., § 1659; *Blair v. Granger*, 24 R. I. 17, 51 Atl. 1042; *Board of Park Commissioners v. Prinz*, 127 Ky. 460, 105 S. W. 948.

<sup>4</sup> *Hubbard v. City of Taunton*, 140 Mass. 467, 5 N. E. 157.

<sup>5</sup> For a *dictum* that expenditure for a theatre is not within "necessary town charges," see *Stetson v. Kempton*, 13 Mass. 272, 279.

<sup>6</sup> *Hodges v. Buffalo*, 2 Denio (N. Y.) 110; *Tash v. Adams*, 10 Cush. (Mass.) 252; *Austin v. Coggeshall*, 12 R. I. 329. But public expenditure for town celebrations is sometimes permissible. *Hill v. Selectmen of Easthampton*, 140 Mass. 381, 4 N. E. 811.

— an attitude demanding new and broader powers. But the giving of mere transitory amusement or sense satisfaction, involving no further benefit to citizens or state, would seem hardly governmental in character. However, where amusement carries with it possibilities of education, and of greater health and morality, the problem raised is quite a different one. It would not be surprising if, in the near future, just such expenditures as those refused by the Ohio court, when kept in the limits of reasonable economy, should be held within the functions of government which the state either expressly or impliedly delegates to the municipality.

---

INTOXICATION AND INSANITY AS DEFENSES IN BILLS AND NOTES.— Historically, mental incompetency was at first considered a complete defense in the law of consensual agreements.<sup>1</sup> Since the party could not understand the nature of the transaction, the possibility of an *animus contrahendi* was by hypothesis negatived.<sup>2</sup> On this ground a recent decision allowed the defense of intoxication by an accommodation co-maker against a holder in due course. *Green v. Gunsten*, 142 N. W. 261 (Wis.). The usual modern view, however, arguing from the analogy to infancy, seems to treat contracts and sales by mental incompetents as merely voidable.<sup>3</sup> This permitting of subsequent ratification is a departure, in theory at least, from the old notion that the mental disability prevented the formation of any contract from the outset. This reasoning was still further developed by the holding of a modern English court that mental incapacity is no defense where the other party acted *bond fide* and without notice.<sup>4</sup> Such a view is in accord with the present tendency to test the validity of the contract, not by the actual *animus contrahendi*, but by the reasonable impression conveyed to the promisee.<sup>5</sup> And the various limitations imposed by different courts on the right of the mental incompetent to avoid seem satisfactorily explainable only on this ground.

If then mental disability is a defense not because of any inherent defect in the contract, but because the law gives immunity under certain circumstances, the only considerations would seem to be those of fairness and policy. Now aside from express contract, where necessaries are furnished to a person *non compos mentis*, a recovery may be had in quasi-contract.<sup>6</sup> Although the liability is not founded on contract but is implied in law, it has been said that a *bond fide* purchaser of a negotiable instrument given for necessities may recover for their value against the insane maker.<sup>7</sup> Fairness and policy argue for this result. Yet to

---

<sup>1</sup> *Sentance v. Poole*, 3 C. & P. 1; *Dexter v. Hall*, 15 Wall. (U. S.) 9; *Yates v. Boen*, 2 Str. 1104.

<sup>2</sup> A peculiar doctrine seems to have existed at one time that a party could not be heard to stultify himself by pleading his lunacy. *Beverley's Case*, 2 Coke 568.

<sup>3</sup> *Wolcott v. Conn. G. L. I. Co.*, 137 Mich. 309, 100 N. W. 569; *Arnold v. Richmond Iron Works*, 1 Gray 434; *Matthews v. Baxter*, L. R. 8 Ex. 132.

<sup>4</sup> *Imperial Loan Co. v. Stone*, [1892] 1 Q. B. 599.

<sup>5</sup> See *WILLISTON, SALES*, § 33.

<sup>6</sup> *Baxter v. Portsmouth*, 5 B. & C. 170; *Waldrone v. Davis*, 70 N. J. L. 788, 58 Atl. 293.

<sup>7</sup> *Hosler v. Beard*, 54 Oh. 398, 403, 43 N. E. 1040, 1042. See *Earle v. Reed*, 10